

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE: GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION**

**14-MD-2543 (JMF)
14-MC-2543 (JMF)**

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

**APPLICATION OF ROBERT N. KAPLAN OF KAPLAN FOX & KILSHEIMER LLP
FOR APPOINTMENT AS A MEMBER OF THE EXECUTIVE COMMITTEE
OR AS PLAINTIFF LIAISON COUNSEL**

I. INTRODUCTION

Pursuant to Order No. 5 (ECF No. 70) Robert N. Kaplan, a partner of Kaplan Fox & Kilsheimer LLP (“Kaplan Fox”), requests appointment as a member of the Executive Committee for Plaintiffs or as Plaintiff Liaison Counsel.¹ Kaplan Fox, which represents plaintiffs in two cases filed against General Motors, is a national law firm with its principal office in New York City, and other offices in San Francisco, Los Angeles, Chicago, and Morristown, New Jersey. *See* www.kaplanfox.com. Mr. Kaplan has substantial expertise for more than 40 years in prosecuting complex litigation, including MDLs and class actions, and is widely recognized as a leader in the field. He and Kaplan Fox also have extensive experience with respect to class certification, including econometrics and regression analysis, and recently had a three-day class evidentiary hearing in the Eastern District of New York. He has demonstrated the ability to litigate effectively and efficiently in a timely manner, working cooperatively with co-counsel and opposing counsel. He is willing to commit significant time and resources to this case.

II. ARGUMENT

Robert N. Kaplan is well-qualified under this Court’s criteria in Order No. 5 to serve on the Executive Committee or as Plaintiff Liaison Counsel.

1. **Mr. Kaplan and Kaplan Fox have substantial expertise litigating complex class actions.**

Mr. Kaplan has led the prosecution of numerous class actions in the 43 years since he joined Kaplan Fox in 1971. Recently, he was listed by defense and corporate counsel as one of the top 75 plaintiffs’ attorneys in the United States for all disciplines. *See* <http://lawprofessors.com>.

¹ Pursuant to Order No. 5, Mr. Kaplan respectfully requests the opportunity to address the Court at the August 11 Initial Conference.

typepad.com/files/dc-188012-v2-trial_lawyer_kingpins1.xls. And, in 2013, the *National Law Journal* chose Kaplan Fox for its “Litigation Boutique Hot List.”²

Prior to joining Kaplan Fox, Mr. Kaplan was a trial attorney with the United States Department of Justice. There, he litigated both civil and criminal actions. He also served as law clerk to the Hon. Sylvester J. Ryan, then Chief Judge of the Southern District of New York. Mr. Kaplan is a member of the Committee on Civil Litigation/Advisory Group of the Eastern District of New York. He is active in the Federal Bar Council, and is currently a member of the Program Committee and the Planning Committee for the 2015 Winter Bench and Bar Conference.³ Mr. Kaplan, who for a number of years served on a part-time basis as a Municipal Judge in Rye, New York, is also a member of the Board of Visitors of Columbia Law School.

Mr. Kaplan has been involved in some of the largest and most important antitrust and securities cases in history. Among his significant achievements are:

In re Bank of America Securities, Derivative & Employment Retirement Income Security Act (ERISA) Litigation, 09-MD-2058 (S.D.N.Y) (PKC), where Kaplan Fox served as co-lead counsel and a landmark \$2.43 billion settlement was obtained on behalf of the firm’s institutional clients and other class members.

In re High Fructose Corn Syrup Antitrust Litigation, MDL No. 1087 (C.D. Ill.), where, after the district court granted summary judgment for the defendants, before the Seventh Circuit, with Judge Posner writing a seminal antitrust law opinion, Kaplan Fox as co-lead counsel obtained a reversal. *See In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651 (7th Cir. 2002). The case settled shortly before trial, resulting in a recovery of \$531 million for the class.

In re Flat Glass Antitrust Litigation, MDL 1200 (W.D. Pa.), where Kaplan Fox was one of four co-lead counsel and Mr. Kaplan successfully argued before the Third Circuit, which issued a groundbreaking summary judgment opinion that is routinely cited in antitrust cases throughout the federal courts. *See In re Flat Glass Antitrust*

² See <http://www.kaplanfox.com/templates/kaplanfox/images/content/pdfs/aba-ces-march2013.pdf>.

³ In 2014, Mr. Kaplan organized two class action programs for the Federal Bar Council, one in New York and one at the 2014 Winter Bench and Bar Conference.

Litig., 385 F.3d 350 (3d. Cir. 2004). *Flat Glass* settled on the eve of trial, with a recovery of \$121 million for the class.

In re Air Cargo Shipping Services Antitrust Litigation, 06-md-1775 (E.D.N.Y.), where Mr. Kaplan is one of four co-lead counsel for direct purchasers in this pending antitrust class action against the world's major providers of air cargo shipping services and where, to date, over \$800 million in settlements have been recovered for the proposed class.

Mr. Kaplan is also currently serving as co-lead counsel in other pending class actions, including *In re Cast Iron Soil Pipe and Fittings Antitrust Litigation*, MDL No. 2508 (E.D. Tenn.); *In re Ductile Iron Pipe Fittings Antitrust Litigation*, 12-cv-00711 (D.N.J.); and *In re Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328 (E.D. La.).

Mr. Kaplan is also highly experienced in securities class action litigation, including cases in which the firm served as lead or co-lead counsel such as *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, Master File No. 07-CV-9633(JSR) (S.D.N.Y.) (\$475 million recovered); *In re 3Com Securities Litigation*, No. C-97-21083-EAI (N.D. Cal.) (\$259 million recovered); and *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08 Civ. 411 (S.D.N.Y.) (\$33 million recovered).

2. Mr. Kaplan and Kaplan Fox have the requisite knowledge of the law.

Based on his more than 40 years of litigating complex class actions, Mr. Kaplan has acquired an impressive knowledge of the practice and procedures necessary to bring a case like this to fruition. Moreover, other Kaplan Fox attorneys have a wealth of knowledge, including partners Gregory K. Arenson, who is noted as one of the preeminent plaintiffs' attorneys with respect to common impact and damages issues, and Laurence D. King, an experienced trial lawyer and former prosecutor in the Manhattan District Attorney's Office, who has regularly championed the interests of consumers under state and federal consumer protection laws.

In many such cases, Kaplan Fox has been appointed as lead or co-lead counsel, liaison counsel, or a member of an executive committee. These include *In re Baycol Products Litigation*, MDL 1431-MJD/JGL (D. Minn.) (victims have recovered \$350 million to date); *In re Providian Financial Corp. Credit Card Terms Litigation*, MDL No. 1301-WY (E.D. Pa.) (\$105 million recovered); *In re Thomas and Friends Wooden Railway Toys Litig.*, No. 07-cv-3514 (N.D. Ill.) (\$30 million settlement obtained for purchasers of recalled “Thomas Train” toys painted with lead paint); *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, No. 4:09-md-2086 (W.D. Mo.) (settlements obtained where consumers received substantially in excess of actual damages and significant injunctive relief); *Berry v. Mega Brands Inc.*, No. 08-CV-1750 (D.N.J.) (class-wide settlement obtained where consumers received full refunds for defective products); and *In re: LinkedIn User Privacy Litigation*, 12-cv-3088-EJD (N.D. Cal.) (motion to dismiss denied; case pending.)

3. Kaplan Fox will commit significant time and resources to this case.

Kaplan Fox has the financial resources and manpower required to litigate this case to a successful conclusion, as shown by the firm’s noteworthy accomplishments in the matters described above. The firm is a recognized leader in prosecuting complex class action cases from beginning to end. Kaplan Fox, with two dozen lawyers practicing throughout the nation, recently settled, as co-lead counsel, *In re Neurontin Antitrust Litigation*, Master File No. 02-1390 (D.N.J.), a complex class action against Pfizer, Inc., for \$190 million on the eve of trial after twelve years of litigation. Moreover, the extraordinary \$2.43 billion recovery in the *Bank of America* case was achieved on virtually the eve of trial after four years of hard-fought litigation. As in those and other cases, Kaplan Fox and Mr. Kaplan are prepared to commit the significant time and resources that this case will require.

4. Kaplan Fox actively investigated the claims asserted.

At Mr. Kaplan's direction, Kaplan Fox actively investigated the claims at issue and devoted significant time researching and developing the legal, factual, and economic bases for plaintiffs' claims. In addition, Kaplan Fox engaged the services of bankruptcy counsel, Michael E. Foreman of Foreman Law PLLC, to provide assistance on the aspects of this matter that may be affected by the General Motors bankruptcy proceedings.

5. Other factors supporting Mr. Kaplan's appointment.

Mr. Kaplan is a long-time member of the bar of this Court and is very familiar with its practices and procedures. Throughout his decades-long career handling complex litigation, Mr. Kaplan has always sought to work closely with co-counsel to maximize results while minimizing duplication of effort. He conducts himself in a highly professional manner when dealing with opposing counsel to avoid acrimony. Indeed, Mr. Kaplan has a history of working cooperatively and collegially with defense lawyers and with other plaintiffs' counsel, and he will do so here to effectively litigate this case. His ability to command the respect of his colleagues and work cooperatively with opposing counsel and the Court supports his appointment.

III. CONCLUSION

For the foregoing reasons, Robert N. Kaplan respectfully requests that the Court grant his application for appointment as a member of the Executive Committee or as Plaintiff Liaison Counsel.

Dated: July 28, 2014

Respectfully submitted,

/s/ Robert N. Kaplan

Robert N. Kaplan

Richard J. Kilsheimer

Gregory K. Arenson

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Robert N. Kaplan
Robert N. Kaplan